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HON. MARTIN J. JENKINS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VIOLET BLUE, an individual,

Plaintiffs,

vs.

ADA MAE JOHNSON aka ADA MAE
WOOFINDEN, an individual; VIOLET
BLUE, INC., a California corporation,

Defendants.

Case No.: C 07-5370 MJJ

**DEFENDANT WOOFINDEN'S
RESPONSE TO THE COURT'S
ORDER TO SHOW CAUSE**

COMES NOW, the Defendant, Ada Woofinden, by and through her counsel of record, Robert S. Apgood, and hereby provides this Response to the Court's Order To Show Cause why no opposition, or statement of non-opposition, has been filed to date in response to the plaintiff's Motion For Leave to File Amended Complaint, and why any tardy filing should be considered at this point given the guidelines of the Local Rules, as well as the Court's Standing Order for civil cases.

Counsel of record, Robert S. Apgood, was admitted *pro hac vice* to represent the defendant, Ada Woofinden, on December 5, 2007. *Declaration of Robert S. Apgood in Support of Defendant Woofinden's Response to the Court's Order to*

1 *Show Cause* (“Apgood Decl.”) at ¶¶ 2-3. Prior to being so admitted, Mr. Apgood
 2 reviewed the Local Rules for the United States District Court, Northern District of
 3 California. *Id.* at ¶ 4. Prior to this matter, Mr. Apgood has never sought admission
 4 to, nor been admitted to practice before the United States District Court, Northern
 5 District of California. *Id.* at ¶ 7.

6 Mr. Apgood is admitted to practice in the Western District of Washington,
 7 Eastern District of Washington, District of Colorado, Southern District of Indiana,
 8 and Middle District of Florida. *Id.* at ¶ 5. He has also been admitted *pro hac vice*
 9 in the District of Arizona and Central District of California. *Id.* at ¶ 6. In none of
 10 those districts is there a local rule compelling a filing of a notice of non-opposition
 11 to a motion if a party does not intend to oppose that motion. *Id.* at ¶ 8. As such,
 12 Mr. Apgood is not habituated to looking for such a rule. *Id.* Mr. Apgood offers
 13 the foregoing information by way of explanation, and not as excuse for his
 14 inaction. *Id.*

15 Because Mr. Apgood is unaccustomed to a local rule requiring an
 16 affirmative pleading for non-opposition to a motion, at the time he reviewed the
 17 local rules, Local Rule 7-3(b), a single-sentence rule requiring the affirmative
 18 pleading, did not make an impression upon him that would bring it to mind when
 19 his client does not intend to oppose a motion. *Id.* at ¶ 9.

20 When the plaintiff filed her motion for leave to amend her complaint, after
 21 obtaining and reviewing the motion and accompanying exhibits, and after
 22 discussion with counsel, the defendant determined that an opposition was not
 23 necessary to preserve her claims and defenses in the matter. *Id.* at ¶¶ 10-12.

24 Based upon past experience in all other districts where Mr. Apgood has
 25 practiced, and based upon accustomization and habituation, Mr. Apgood
 26 unconsciously concluded that the motion would automatically be granted when the

1 defendant did not file an opposition. *Id.* at 13. At no time did Mr. Apgood intend
2 to show disrespect to this Honorable Court, nor plaintiff nor plaintiff's counsel.
3 Consequently, Mr. Apgood extends his sincerest apologies to the Court, plaintiff
4 and plaintiff's counsel. *Id.* at ¶¶ 15-16. Mr. Apgood takes full responsibility for
5 his inaction and respectfully requests this Honorable Court to not allow his
6 oversight to prejudice the defendant, Ada Woofinden. *Id.* at ¶ 16.

7 Mr. Apgood undertakes to hereafter be more diligent in scrutinizing the rules
8 and conforming his conduct to the local rules. *Id.* at ¶ 17.

9 DATED THIS 21st day of January 2008.

10 Respectfully submitted,

11
12 CARPELAW PLLC

13 /s/ Robert S. Apgood
14 Robert S. Apgood, *Pro Hac Vice*
15 WSBA #31023
16 Attorney for Defendant Ada Mae Woofinden
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DECLARATION OF SERVICE

I, Robert S. Apgood, hereby make the following Declaration from personal knowledge that on January 21, 2008, I electronically filed the foregoing

1. Defendant Woofinden's Response to the Court's Order to Show Cause; and
2. this certificate of Service

with the Clerk of the Court using the CM/ECF system. In accordance with their ECF registration agreement and the court's rules, the Clerk of the Court will send e-mail notification of such filing to the following attorneys:

Collette Vogeles
Benjamin Costa
Vogeles & Associates
580 California Street
Suite 1600
San Francisco, CA 94104

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 21st of January 2008 at Seattle, Washington.

CARPELAW PLLC

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